IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4349 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEVARAM SAKLECHA

Versus

STATE OF GUJARAT

Appearance:

MR DK ACHARYA for Petitioners

MR KT DAVE, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 20/06/2000

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution, the petitioners have challenged the order dated 28.1.1999 (Annexure "C") passed by the Collector, Banaskantha under Section 6A of the Essential Commodities Act, 1955, as confirmed by the judgment and order dated 12.4.1999 (Annexure "F") passed by the learned Additional Sessions Judge, Banaskantha at

Palanpur in Criminal Appeal No. 8/99.

2. Petitioner No. 1 is a trader who possesses the licence for dealing in essential commodities at the APMC, Unjha. Petitioner No. 2 is the owner of the truck in which the goods in question were being carried. Under invoice No. 102 dated 8.11.1998, petitioner No. 1 had consigned 113 bags of til seeds weighing Q.79-20 Kgs. to M/s Sharda Oil Industries of Sumerpur in Rajasthan in truck No. RJ-22G-0523 belonging to petitioner No. 2. When the truck reached Palanpur check post on 9.11.1998, the Supply Inspector of the State Government made scrutiny of the papers and noticed the following irregularities :-

(i) Under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 and particularly under the statutory orders issued under Clause 24 of the said Licensing Order, a person transporting edible oil and oil seeds is required to give prior intimation to the Collector 48 hours before removing the goods outside the State. The petitioners had not given any such intimation and, therefore, they did not have the requisite intimation permit and hence, the petitioners had committed violation of the statutory orders.

(ii) The bill in question (bearing No. 102 dated 8.11.1998) was issued by Mevaram Saklecha of Unjha i.e. petitioner No. 1. However, the bill did not mention the number of licence issued under the Licensing Order of 1981 and so also it did not mention the license number of the consignee. The bill also did not have printed number.

(iii) & (iv) The truck was carrying til from Unjha but the other goods in the truck such as cloth, sugar etc. were loaded at Ahmedabad. Til seeds were put at the bottom and in the front whereas the other goods were at the top. Hence, there was an intention to conceal the transport of goods in contravention of law.

Alleged irregularities Nos. 3 and 4 were on the question of intention of the parties and they are subsidiary to the alleged irregularities Nos. 1 and 2.

(v) Irregularity No. 5 pertained to the truck owner not carrying the requisite intimation. This irregularity is also, therefore, consequential to irregularities Nos. 1 and 2.

The officers of the Civil Supply Department thereupon seized the til seeds valued at Rs.1,47,810/and the truck in question valued at about Rs.6,00,000/-. The Collector issued show cause notice dated 20.11.1998 calling upon the petitioners to show cause why the til seeds and the truck should not be confiscated. Petitioner No. 1 submitted his reply dated 15.12.1998 contending that the petitioner was not involved in any illegal activity. This was the first time that petitioner No. 1 was exporting til seeds outside the State and, therefore, he was not aware of the requirement to give intimation or to obtain any such intimation permit, but as soon as he came to know about the requirements, he had gone to the Collector, Palanpur and given the intimation and obtained the permit and on that basis he exported the commodities outside the State on 13.11.1998. The invoice in question contained the State Sales Tax registration number and Central Sales Tax registration number and also oil seeds No. 1922 which is the license number. There was no intention to conceal the movement of the commodity as the oil seeds were to be unloaded last and, therefore, they were kept at the bottom. All the requisite particulars were given in the intimation and there was no intention to commit breach of any rules or regulations. After hearing the reply, the Collector passed the impugned order dated 28.1.1999 confiscating 30% of the value of the oil seeds and 10% of the value of the truck.

Aggrieved by this order, the petitioners preferred an appeal before the Sessions Court at Palanpur under Section 6C of the Act. The appeal came to be dismissed by the judgment and order dated 12.4.1999. Hence, the petitioners have filed this petition.

3. At hearing of the petition, Mr DK Acharya, learned counsel for the petitioners has submitted that the instructions or the orders under which petitioner No. 1 was required to give an intimation were rescinded on 3.12.1998 before the Collector passed the impugned order of confiscation. Hence, there was no question of examining whether the petitioner had committed any illegality or not.

In the alternative, it is submitted that in any view of the matter, the petitioner had not transported

the goods outside the State without giving intimation or without obtaining the permit. As soon as the petitioner came to learn about the requirements on 9.11.1998, the petitioner gave an intimation and obtained the permit on 13.11.1998 and that, therefore, the petitioner had not violated any instructions, statutory or otherwise.

Lastly, it is submitted that in any view of the matter, the order of confiscation was too harsh as the so-called breaches are technical and for such technical breaches, petitioner No. 1 could not have been saddled with the liability to pay an amount of Rs.44,343/- and petitioner No.2-truck owner could not have been saddled with the liability to pay Rs.60,000/-.

4. On the other hand, Mr KT Dave, learned AGP has supported the orders and has submitted that at the relevant time i.e. on 9.11.1998 the statutory orders were very much in force and, therefore, the petitioners having committed breach of the statutory orders, were liable to pay the amounts as determined by the Collector and confirmed by the learned Sessions Judge.

5. Having heard the learned counsel for the parties, this Court is of the view that even proceeding on the basis that the petitioners had committed breach of the relevant statutory orders on 9.11.1998, the order passed passed by the Collector is too harsh and was not at all warranted. In N. Nagendra Rao & Co. vs. State of A.P., AIR 1994 SC 2663, Their Lordships were pleased to observe as under :-

> "Since the power of confiscation under S.6A is very wide as a person violating the Control Orders is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found or is conveyed or carried, but is liable to be prosecuted and penalised under S. 7 of the Act, it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further, the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word `may'. A trader indulging in black marketing or selling adulterated goods

etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock."

6. Now it is not in dispute that the petitioners did not have the intimation permit on 9.11.1998 when the truck reached Palanpur check post. Palanpur is at a distance of about 45 kms. from the border of Rajasthan. Hence, the petitioner had not stricto sensu committed the breach of the statutory orders when the truck was examined at the Palanpur check post. However, in view of the admitted fact that the goods i.e. oil seeds were to be delivered at Sumerpur in Rajasthan, since the petitioners had not given the intimation and obtained the intimation permit before moving the goods outside the boarders of the State of Gujarat, the breach of the statutory orders on 9.11.1998 was only technical. It is not the case of the State Government that there is any price control on the til oil seeds. If there is a price control, then there may be a possibility of siphoning away the commodity in question into black market and sell it at a higher price. So also there is no allegation of any adulteration. Hence, the violations in question were only of technical regulations and the Collector ought not to have passed the order requiring the petitioners to pay an amount of 30% of the value of the oil seeds and 10% of the truck. In the facts and circumstances of the case and also considering the fact that the statutory orders in question came to be rescinded on 3.12.1998, this Court is of the view that interests of justice would be served if petitioner No. 1 is required to pay the Collector an amount equivalent to 5% of the value of the til oil seeds and petitioner No. 2 is directed to pay the Collector an amount of Rs.5,000/(five thousand only).

7. In the result, the petition is partly allowed. The impugned order dated 28.1.1999 (Annexure "C") passed by the Collector, Banaskantha and the judgment and order dated 12.4.1999 (Annexure "F") passed by the learned Additional Sessions Judge, Banaskantha at Palanpur in Criminal Appeal No. 8/99 are modified to the extent that petitioner No. 1 is required to pay the Collector only 5% of the value of the commodity i.e. 5% of Rs.1,47,810/- and petitioner No. 2 shall pay the Collector an amount of Rs.5,000/- for the technical violations which resulted into show cause notice dated 20.11.1998 (Annexure "A") culminating into the order dated 28.11.1999 (Annexure "C") and order dated 12.4.1999 of the Sessions Court at Annexure "F". The amounts shall

be paid within two weeks from today. Upon the amounts being paid, the bank guarantee given by petitioner No. 1 shall stand discharged.

8. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

Direct Service is permitted.

June 20, 2000 (M.S. Shah, J.)
sundar/-